

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR CHANGE OF APPROPRIATION WATER)	FINAL
RIGHT G(P)023312-411 BY TOWN VIEW)	ORDER
ESTATES WATER USERS ASSOCIATION)	

* * * * *

The Proposal for Decision (Proposal) in this matter was entered on September 13, 1996. Applicant filed a timely exception to the Proposal but did not request an oral argument hearing. Objector M & W Enterprises, LLC., did not file exceptions to the Proposal on this matter.

Applicant excepted to Finding of Fact 3, specifically, the second sentence which states, "The point of diversion would be changed from the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ to a point ten feet northwest of the existing well." Applicant points out this language is repeated in the Proposed Order. Applicant contends there is nothing in the record to support the change being limited to "ten feet northwest" of the existing well for which a change is sought. Applicant points out further that their agreement with Objector M & W allows the well within 40 feet of existing number two well.

The objectionable location merely recites what was provided for the location of the new well in Item 4 (A) 6.) of the application. However, it is not necessary to pinpoint the location of the new well so precisely particularly when Objector has agreed to a more flexible location. The Final Order will be modified to conform with the Town View and M & W agreement on the location of the new well.

The Department of Natural Resources and Conservation adopts the Findings of Fact and Conclusions of Law as contained in the Proposal for Decision for this Final Order. Based upon the Findings of Fact and Conclusions of Law, the Department of Natural Resources and Conservation makes the following:

ORDER

Subject to the terms, conditions, restrictions, and limitations specified below, Authorization to Change Appropriation Water Right to change the point of diversion of the water right authorized by Beneficial Water Use Permit 023312-41I with a priority date of June 26, 1979, 3:00 p.m. is granted to Town View Estates Water Users Assoc. The point of diversion will be changed to a point within 40 feet of the existing Number 2 well. The new well will also be located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, Township 11 North, Range 3 West, Lewis and Clark County.

A. This right is subject to Section 85-2-505, MCA, requiring all wells be constructed so they will not allow water to be wasted, or contaminate other water supplies or sources, and all flowing wells shall be capped or equipped so the flow of the water may be stopped when not being put to beneficial use. The final completion of the well(s) must include an access port of at least .50 inch so the static level of the well may be accurately measured.

B. This right is subject to the condition that the appropriator shall install an adequate flow metering device to allow the flow rate and volume of water diverted to be recorded. The

appropriator shall keep a written record of the flow rate and volume of all waters diverted, including the period of time, and shall submit said records by November 30th of each year and/or upon request to the Water Resources Regional Office at 21 N. Last Chance Gulch, Helena, MT 59620-1601.

C. This replacement well shall be completed by a driller licensed by the State of Montana.

D. The issuance of this right by the Department shall not reduce the appropriator's liability for damages caused by the appropriator's exercise of this right. Nor does the Department in issuing the right in any way acknowledge liability for damage caused by the appropriator's exercise of this right.

E. This authorization is subject to the authority of the Department to revoke the authorization in accordance with 85-2-402(9), MCA, and to enter onto the premises for investigative purposes in accordance with 85-2-115, MCA.

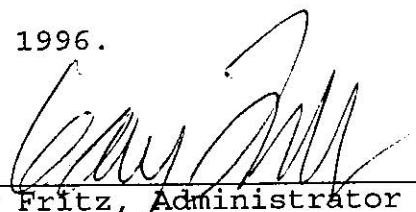
F. The appropriator shall measure and record the static water level each year in all production wells on or about the first of each month. Records must include the water level, method of measurement, date and time of measurement and description of the measuring point on the casing. The measurement shall be recorded only at a time when the water level is static or there is no significant change in measurements taken one or two minutes apart. The records shall be submitted by November 30 or each year to the Water Resources Regional Office, Box 210601, Helena, MT 59620-1601.

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within 30 days after service of the Final Order.

If a petition for judicial review is filed and a party to the proceeding elects to have a written transcription prepared as part of the record of the administrative hearing for certification to the reviewing district court, the requesting party must make arrangements with the Department of Natural Resources and Conservation for the ordering and payment of the written transcript. If no request is made, the Department will transmit a copy of the tape of the oral proceedings to the district court.

Dated this 1 day of October, 1996.



Gary Fritz, Administrator
Department of Natural Resources
and Conservation
Water Resources Division
P.O. Box 201601
Helena, Montana 59620-1601
(406) 444-6605

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record, first class mail, at their address or addresses this 28th day of October, 1996 as follows:

Town View Estates Water Users
P.O. Box 9646
Helena, MT 59604

Robert H. & Jean R. Anderson
910 Prairie Road
Helena, MT 59601

David K.W. Wilson, Jr.
401 N. Last Chance Gulch
Helena, MT 59601

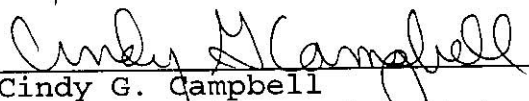
Mike McMahon
2225 11th Ave Suite 21
Helena, MT 59601

Vivian A. Lighthizer
Hearing Examiner
Department of Natural
Resources and Conservation
P.O. Box 201601
Helena, MT 59620-1601

M & W Enterprises
4528 Hwy 12 West
Helena, MT 59601

William G. Anderson
Marjorie M. Anderson
960 Prairie Road
Helena, MT 59601

T.J. Reynolds, Manager
Jim Beck, CES
Helena Water Resources
Regional Office
P.O. Box 201601
21 N. Last Chance Gulch
Helena, MT 59620-1601


Cindy G. Campbell
Hearings Unit Legal Assistant

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)	PROPOSAL
FOR CHANGE OF APPROPRIATION WATER)	FOR
RIGHT G(P)023312-41I BY TOWN VIEW)	DECISION
ESTATES WATER USERS ASSOCIATION)	

* * * * *

Applicant and Objector have reached an agreement and Objector has withdrawn his objections. Consequently, the contested case hearing has been vacated and the Department's decision will be based on the existing record.

The Hearing Examiner, having reviewed the record in this matter and being fully advised in the premises, does hereby make the following:

FINDINGS OF FACT

1. Application for Change of Appropriation Water Right G(P)023312-41I in the name of Town View Estates Water Users' Assn. Inc and signed by Russ G. Hyatt was filed with the Department of Natural Resources and Conservation (Department) on August 22, 1995. (Department file.)

2. Pertinent portions of the application were published in the *Independent Record*, a newspaper of general circulation in the area of the source, on November 15, 1995. Additionally, the Department served notice by first-class mail on individuals and public agencies which the Department determined might be interested in or affected by the application. One objection to the proposed change was received by the Department. Applicant was

notified of the objection by a letter from the Department dated January 24, 1996. (Department file.)

3. Applicant seeks to change the point of diversion of the water right authorized by Beneficial Water Use Permit 023312-41I with a priority date of June 26, 1979, 3:00 p.m. The point of diversion would be changed from the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ to a point ten feet northwest of the existing well. The new well would also be located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, Township 11 North, Range 3 West, Lewis and Clark County.¹ (Department file.)

4. Applicant has proven by a preponderance of evidence the proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved. The new well would pump no more than allowed by the underlying permit, 150 gallons per minute. The drilled hole for the old well was six inches in diameter making the installation of a pump adequate to pump 150 gallons per minute at the necessary depth, 156 feet, impossible. (Department file.)

5. Applicant has proven by a preponderance of evidence the proposed diversion, construction, and operation of the appropriation works are adequate. One of the conditions placed on any authorization to change issued for this application would require the well to be constructed by a licensed well driller. The

¹Unless otherwise stated all land descriptions are located in Township 11 North, Range 3 West, Lewis and Clark County.

delivery works are in place and have been used successfully since the development of the subdivision. (Department file.)

6. No objections relative to water quality were filed against this application nor were there any objections relative to the ability of a discharge permit holder to satisfy effluent limitations of his permit. (Department file.)

7. The use of water, multiple domestic, is a beneficial use of water. Applicant, which is comprised of the home owners in the subdivision, will benefit from the use of this water by supplying adequate water for the inhabitants of the subdivision. (Department file.)

8. Applicant has proven by a preponderance of evidence that it has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. Applicant is the home owners of the subdivision where each property owner in the subdivision owns that part of the property where the water will be used. (Department file.)

Based upon the foregoing Findings of Fact and upon the record in this matter, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Department gave proper notice of the hearing, and all substantive procedural requirements of law or rule have been fulfilled; therefore, the matter was properly before the Hearing Examiner. See Findings of Fact 1 and 2.

2. Applicant has met the criteria for issuance of an authorization to change appropriation water right. See Findings of Fact 3 through 8.

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner makes the following:

PROPOSED ORDER

Subject to the terms, conditions, restrictions, and limitations specified below, Authorization to Change Appropriation Water Right to change the point of diversion of the water right authorized by Beneficial Water Use Permit 023312-41I with a priority date of June 26, 1979, 3:00 p.m. is granted to Town View Estates Water Users Association. The point of diversion will be changed from the SW~~1~~/~~4~~NW~~1~~/~~4~~NE~~1~~/~~4~~ to a point ten feet northwest of the existing well. The new well will also be located in the SW~~1~~/~~4~~NW~~1~~/~~4~~NE~~1~~/~~4~~ of Section 7, Township 11 North, Range 3 West, Lewis and Clark County.

A. This right is subject to Section 85-2-505, MCA, requiring all wells be constructed so they will not allow water to be wasted, or contaminate other water supplies or sources, and all flowing wells shall be capped or equipped so the flow of the water may be stopped when not being put to beneficial use. The final completion of the well(s) must include an access port of at least .50 inch so the static level of the well may be accurately measured.

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appropriator shall keep a written record of the flow rate and volume of all waters diverted, including the period of time, and shall submit said records by November 30th of each year and/or upon request to the Water Resources Regional Office at 21 N. Last Chance Gulch, Helena, MT 59620-1601.

C. This replacement well shall be completed by a driller licensed by the State of Montana.

D. The issuance of this right by the Department shall not reduce the appropriator's liability for damages caused by the appropriator's exercise of this right. Nor does the Department in issuing the right in any way acknowledge liability for damage caused by the appropriator's exercise of this right.

E. This authorization is subject to the authority of the Department to revoke the authorization in accordance with 85-2-402(10), MCA, and to enter onto the premises for investigative purposes in accordance with 85-2-115, MCA.


F. The appropriator shall measure and record the static water level each year in all production wells on or about the first of each month. Records must include the water level, method of measurement, date and time of measurement and description of the measuring point on the casing. The measurement shall be recorded only at a time when the water level is static or there is no significant change in measurements taken one or two minutes apart. The records shall be submitted by November 30 or each year to the Water Resources Regional Office, Box 210601, Helena, MT 59620-1601.

NOTICE

This proposal may be adopted as the Department's final decision unless timely exceptions are filed as described below. Any party adversely affected by this Proposal for Decision may file exceptions with the Hearing Examiner. The exceptions must be filed and served upon all parties within 20 days after the proposal is mailed. Parties may file responses to any exception filed by another party. The responses must be filed within 20 days after service of the exception and copies must be sent to all parties. No new evidence will be considered.

No final decision shall be made until after the expiration of the time period for filing exceptions, and due consideration of timely exceptions, responses, and briefs.

Dated this 13th day of September, 1996.


Vivian A. Lighthizer,
Hearing Examiner
Department of Natural Resources
and Conservation
P.O. Box 201601
Helena, Montana 59620-1601
(406) 444-6615

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Proposal for Decision was duly served upon all parties of record, first class mail, at their address or addresses this 13th day of September, 1996, as follows:


Town View Estates Water Users
P.O. Box 9646
Helena, MT 59604

David K.W. Wilson, Jr.
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T.J. Reynolds, Manager
Jim Beck, CES
Helena Water Resources
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21 N. Last Chance Gulch
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Cindy G. Campbell
Hearings Unit Legal Assistant